



LAWRENCE LIVERMORE NATIONAL LABORATORY

GENERAL PROVISIONS FOR COMMERCIAL SUPPLIES AND SERVICES – DOMESTIC

DEFINITIONS

As used herein, the following terms shall have the indicated meanings:

"CFR" means the U. S. Code of Federal Regulations.

"DOE/NNSA" means the U. S. Department of Energy National Nuclear Security Administration.

"Government" means the U.S. Government.

"LLNL" means the Lawrence Livermore National Laboratory.

"LLNS" means Lawrence Livermore National Security, LLC.

"Ordered Items" or "Items" means the commercial items, components, or services ordered under the Purchase Order.

"Purchase Order" means the purchase order, subcontract, or agreement entered into with the Seller which includes these GENERAL PROVISIONS.

"Seller" means the party who entered into the Purchase Order with the Lawrence Livermore National Security, LLC, as identified in the Purchase Order.

SCOPE OF PURCHASE ORDER

The scope of the Purchase Order shall be limited to the acquisition of commercial items or commercial components, as defined in FAR 2.101, and shall not include any research, development, or demonstration work.

To the maximum extent practicable, the Seller shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items, as defined in FAR 2.101, as components of items to be supplied under the Purchase Order.

The Purchase Order is entered into as a subcontract under LLNS' Prime Contract No. DE-AC52-07NA27344 with the Government, represented by the DOE/NNSA, for management and operation of the LLNL and the performance of certain research and development work.

ACCEPTANCE OF PURCHASE ORDER

The Seller's written acceptance of this Purchase Order or the performance of any portion of this Purchase Order shall constitute the Seller's unqualified acceptance of this Purchase Order and all of the Purchase Order's terms and conditions. Any alterations made to the documents comprising this Purchase Order or any conditions imposed by the Seller upon its written acceptance of this Purchase Order are not acceptable and shall constitute a proposal for modification of the Purchase Order only and shall have no effect on the validity or the Seller's acceptance of this Purchase Order and its terms and conditions, anything to the contrary notwithstanding.

In the event the Seller's business status indicated in the Purchase Order or in the Seller's proposal is not accurate and current, in accordance with applicable Federal laws, executive orders, and regulations, LLNS may cancel the Purchase Order, without further obligation.

SUBCONTRACTS WITH LLNS TEAM MEMBERS AND AFFILIATES

A. As used in this clause:

1. Team Member means any of the following entities: Bechtel National, Inc.; The Regents of the University of California; The Babcock and Wilcox Company; Washington Group, a division of the URS Corporation; Battelle Memorial Institute; GEM Technology International Corporation; Professional Project Services, Inc. (Pro2Serve); Dynamac Corporation; TerranearPMC, LLC (TPMC); and Texas A&M University System.
2. Team Member Affiliate means any person or entity which is a wholly owned, majority owned, or otherwise an affiliate of any Team Member. The term affiliate is defined at FAR 2.101.

B. Because of restrictions in the contract between DOE/NNSA and LLNS concerning the payment of fee or profit when subcontracting with any Team Member or any Team Member Affiliate, as well as Organizational Conflict of Interest concerns, neither the Seller nor any tier of its lower tier subcontractors or suppliers shall enter into a subcontract with any Team Member or any Team Member Affiliate to provide goods or services under this Purchase Order without the advance written approval of the LLNS Contract Administrator.

C. The Seller shall include the substance of this clause in all of its lower tier subcontracts and purchase orders.

SHIPMENTS FOR LLNS' ACCOUNT

Except as otherwise provided in the Purchase Order, all shipments by the Seller for LLNS' account shall be (1) shipped FOB Shipping Point and marked as shipped "For the U. S. Department of Energy;" (2) shipped at the maximum declared value for the lowest applicable transportation rate or classification, and the bill of lading shall so note; and (3) self-insured by LLNS and not insured by the Seller. Airway bills shall be marked with the appropriate "Government Package" entry. Shipping costs in excess of those per the "Shipping Instructions" specified on the face of the Purchase Order shall be deducted from the Seller's invoice(s).

TITLE AND RISK OF LOSS

Unless otherwise provided in the Purchase Order, title to the Ordered Items purchased under the Purchase Order shall pass directly to the Government upon, and the risk of loss or damage to the Ordered Items shall remain with the Seller until, and shall pass to LLNS:

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|------------------------|---|
| If F.O.B. Origin: | Upon completion of delivery to the carrier and any loading by the Seller. |
| If F.O.B. Destination: | Upon completion of delivery or commencement of unloading at the delivery point. |

PACKAGING INSTRUCTIONS

The Seller shall suitably package the Ordered Item(s) to prevent damage during handling and shipping. The Seller shall use biodegradable packaging materials, to the extent practicable. Any damage resulting from improper packaging, containerizing, or lack thereof shall be the liability of the Seller, anything to the contrary notwithstanding. The Seller shall indicate LLNS Purchase Order number on each container or package. An itemized packing list shall be affixed to the outermost cover of each container or package.

INVOICES AND PAYMENT

- A. The Seller shall submit its invoice at the time of final shipment of the Ordered Items or final completion of the services, unless otherwise provided in the Purchase Order. The invoices shall reference the Purchase Order Number and include a complete description of the Ordered Items, prices, and ship dates, and the name of the LLNS Contract Administrator. Failure to comply with any of these requirements may result in a delay in payment of the invoices.
- B. Payment shall be made for Ordered Items delivered to the specified delivery destination, and services completed, and accepted by LLNS. Unless otherwise provided in the Purchase Order, the terms of payment shall be 30 days after receipt of the Seller's properly submitted invoice. Any offered discount shall be taken if payment is made within the discount period indicated by the Seller. Payments may be made by check or electronic funds transfer, at the option of LLNS. Payment shall be deemed to have been made as of the date of mailing or the date on which an electronic funds transfer was made.

RESPONSIBILITY FOR TECHNOLOGY EXPORT CONTROL

- A. The Seller shall comply with all applicable U.S. export control laws and regulations in the performance of this Purchase Order and the distribution and use of resulting work products. Generally, U.S. export control laws and regulations apply to any shipment, transmission, transfer, or exposure to any foreign person, as defined in 22 CFR 120.16, of commodities (equipment, hardware, or material); technology (technical data, information, or assistance); and software (commercial or custom), regardless of where (inside or outside the United States) or how it may occur.
- B. The Seller shall be responsible for obtaining the appropriate licenses or other approvals for exports of commodities, technology, and software, unless an exemption or exception applies. The Seller shall also be responsible for obtaining the appropriate licenses or other approvals before utilizing a foreign person or entity in the performance of this Purchase Order, including instances where the work is to be performed at the LLNL, where the foreign person or entity will have access to any information, technology, or software subject to export control.
- C. The Seller shall be responsible for all regulatory record-keeping requirements associated with the use of licenses and license exemptions and exceptions.
- D. The Seller shall ensure that the provisions of this clause apply to its subcontractors.

ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES

- A. The Seller shall utilize environmentally preferable products and services, i.e., products and services that have a lesser or reduced effect on human health and the environment, including those with "recovered material," as defined in 48 CFR 2.101 and 11.301, to the maximum extent possible without conflicting with the technical requirements of the Purchase Order or jeopardizing the intended end use of the Ordered Items or services to be furnished under this Purchase Order.

- B. To the extent available, the minimum content standard for high speed copier paper, offset paper forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock used in performing this Purchase Order shall be no less than 30 percent post-consumer material.
- C. The Seller shall notify the LLNS Contract Administrator in writing if an "EPA-designated item", as defined in 48 CFR 23.402, used in performing this Purchase Order does not contain at least the percentage of recovered material required by any applicable specification of this Purchase Order. Such notice shall include a detailed written justification for such failure, on the basis that the item is not available competitively within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price.

INSPECTION

LLNS reserves the right to inspect all and every part of the Ordered Items under the Purchase Order, during and after completion of performance. LLNS shall not be obligated to inspect the Ordered Items, and neither the inspection nor the lack of inspection by LLNS shall relieve the Seller of its responsibility for providing the Ordered Items in accordance with the terms and conditions of the Purchase Order. The inspection, use of, or payment for an Ordered Item under the Purchase Order, either wholly or in part, shall not be construed as an acceptance.

If any Ordered Item or any part of it is not in accordance with the terms and conditions of the Purchase Order, LLNS shall notify the Seller that the Ordered Item is rejected. Thereupon, the Seller shall, at its own expense, take the necessary corrective action. LLNS shall reject performance or revoke its acceptance of an Ordered Item: (1) within a reasonable time after a defect is discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the Ordered Item, unless the change is due to a defect in the Ordered Item.

CHANGES

LLNS may direct the Seller to make changes within the general scope of this Purchase Order to (1) any Ordered Items to be manufactured or assembled specifically for LLNS, or the method of shipment, packaging, or place of delivery; and (2) any services to be performed or their time and place of performance. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this Purchase Order, the LLNS Contract Administrator shall make an equitable adjustment in the Purchase Order price, delivery schedule, or both, by a written modification to the Purchase Order. The Seller must submit any claim for an equitable adjustment within 30 days from receipt of a directed change, or by such other time as the LLNS Contract Administrator may permit. Changes to the terms and conditions of this Purchase Order may be made only by the written agreement of the parties.

PRICING OF ADJUSTMENTS

If costs are a factor in determining any price adjustment pursuant to a change made to this Purchase Order, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR Part 31), as supplemented by DEAR Part 931(48 CFR Part 931) in effect as of the date of award of this Purchase Order. LLNS reserves the right to review the Seller's records to verify that such price adjustments conform to these requirements. The review may be performed by LLNS personnel or a cognizant Government audit agency.

QUALITY OF ORDERED ITEMS

- A. The Ordered Items(s), including any materials and supplies furnished or used by the Seller in the performance of any services, shall as a minimum: (1) conform to the requirements of this Purchase Order and be as warranted; (2) be new and not be of such age or so deteriorated as to impair their usefulness or safety; and (3) not contain any counterfeit/suspect items. The furnishing of reconditioned Ordered Items must be specified in the Purchase Order or approved by the LLNS Contract Administrator, and shall be warranted the same as new items.
- B. LLNS will not accept any Ordered Items, including any services involving the furnishing or use of materials or supplies, found by LLNS to not meet the minimum requirements of paragraph A, above; to be reconditioned; or to constitute suspect/counterfeit items, notwithstanding any inspection or acceptance of delivery by LLNS, unless such condition is specifically approved in writing by the LLNS Contract Administrator. The Seller shall promptly replace such items at its expense with conforming items.
- C. LLNS will impound any suspect/counterfeit items furnished or used under this Purchase Order and may provide such items to the appropriate authorities for investigation. LLNS reserves the right to withhold payment for the suspect/counterfeit items pending the results of any such investigation.
- D. A suspect item is any material, part, or component that visual inspection, testing, or other information indicates may not conform to established Government or industry-accepted specifications or national consensus standards. A counterfeit item is a suspect item that is a copy or substitute made without legal right or authority or whose material, performance, or characteristics are knowingly misrepresented by the Seller, supplier, distributor, or manufacturer. Types of known

suspect or counterfeit items include, but are not limited to: fasteners, circuit breakers, valves, piping components, electrical devices, plate, bar, shapes, and channel members. Such items may be falsely labeled as a different class of part, or be used or refurbished parts that are falsely represented as new parts.

WARRANTY

The Seller warrants that the Ordered Items will be merchantable and fit for use for the particular purpose described in the Purchase Order and that services performed will be as specified in the descriptions and specifications of this Purchase Order and free from defects in workmanship, material, and Seller's design or engineering contributions. The Seller shall correct any nonconformance with this warranty discovered within one year after acceptance or initial use of the supplies or services. Except as otherwise provided by an express or implied warranty, the Seller will not be liable to LLNS for consequential damages resulting from any defect or deficiencies in accepted Ordered Items.

LAWS AND REGULATIONS

The Ordered Items shall be designed, produced, sold, and delivered in accordance with, and Seller and its employees and sub-vendors shall at all times comply with, all applicable laws, rules, regulations, and executive orders, including, but not limited to, those relating to wages, hours, employment discrimination, immigration, safety (including those pertaining to worker safety and health), export control, and environmental protection.

RELEASE OF INFORMATION

The Seller shall coordinate any planned advertisements, news releases, or other public releases of information concerning this Purchase Order, the undertaking, or any data developed hereunder with the LLNS Contract Administrator prior to release. The Seller may acknowledge LLNS, the LLNL, and Government sponsorship as appropriate, provided the LLNS Contract Administrator is provided written notice thereof.

TAX ASSESSMENT NOTIFICATION

The Seller agrees to notify LLNS of any State or local law tax, fee or charge levied or purported to be levied on or collected from the Seller in connection with this Purchase Order for which an exemption is claimed by LLNS or concerning which the Seller has reason to believe or LLNS has advised the Seller that such tax, fee, or charge is or may be inapplicable or invalid. The Seller further agrees to refrain from paying any such tax, fee, or charge, unless otherwise authorized by LLNS, and to take such steps as may be required by LLNS to cause such tax, fee, or charge to be paid under protest and, if so directed by LLNS, to cause to be assigned to LLNS or its designee any and all rights to the abatement or refund of any such tax, fee, or charge, and to permit LLNS or its designee to join with the Seller in any proceedings for the recovery thereof or to sue for recovery in the Seller's name.

ASSIGNMENTS

- A. This Purchase Order may be assigned by LLNS to the Government or its designee(s).
- B. Except as to assignment of payment due hereunder, the Seller shall have no right, power or authority to sell, mortgage, transfer or assign this Purchase Order, any portion hereof, any interest herein or any claim hereunder, nor allow or permit any other party or parties to have any interest in or use any part of the rights or obligations granted hereunder for any purpose whatsoever without the prior written consent of LLNS.

DISPUTES

- A. Except as otherwise provided in the Purchase Order, any claim for an equitable adjustment under the Purchase Order not resolved in the ordinary course of business shall be referred in writing to the LLNS Contract Administrator within 30 calendar days of the act, event, or order giving rise to the claim. The Seller must submit its claim for an equitable adjustment, if any, within 30 days from receipt of the directed change, or by such other time as the LLNS Contract Administrator may permit. The representatives of the parties, or their designees, shall then attempt in good faith to resolve the dispute by negotiations. All negotiations shall be confidential and shall be treated as compromise and settlement negotiations, for the purposes of application of rules of evidence. Pending resolution of the dispute, the Seller shall proceed diligently with the performance of the Purchase Order, in accordance with its terms and conditions.
- B. Any unresolved dispute with a value under \$100,000 relating to the Purchase Order (whether contract, tort, or both), or the breach of the Purchase Order shall be arbitrated by and in accordance with the then existing commercial arbitration rules of the American Arbitration Association (AAA). Judgment on the award rendered by the arbitrator may be entered in any court in Alameda County, CA having jurisdiction.
- C. The following modifications are made to the AAA rules: (1) the arbitrator shall be neutral and appointed by the AAA; (2) the location for all arbitration proceedings shall be in Alameda County; and (3) each party to the arbitration shall pay

its pro rata share of the arbitrator's fees not including counsel fees or witness fees or other expenses incurred by a party for its own benefit.

- D. The parties shall consider the use of a form of alternate disputes resolution (ADR), including non-binding mediation and binding arbitration, for any unresolved dispute with a value of \$100,000 or more. In the event that ADR fails or is not used for such disputes, the parties may thereafter pursue any remedy they may have, at law or in equity, in a court of competent jurisdiction, in accordance with the provision of these GENERAL PROVISIONS entitled *GOVERNING LAW AND VENUE*.

BANKRUPTCY

If the Seller enters into any proceeding related to bankruptcy, it shall give written notice to the Buyer via certified mail within five days of initiation of the proceeding. The notification shall include the date on which the proceeding was filed, the identity and location of the court, and a listing of the LLNS purchase orders, subcontracts, or agreements affected.

EXCUSABLE DELAYS

The Seller shall be liable for default unless non-performance is caused by an occurrence beyond the reasonable control of the Seller and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, flood, epidemics quarantine, restrictions, strikes, unusually severe weather, and delays of common carriers. The Seller shall notify LLNS in writing as soon as reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give LLNS written notice of the cessation of such occurrence.

TERMINATION

- A. The Purchase Order may be terminated by LLNS at any time, at will, with or without cause, with or without the giving of any reasons, and by giving notice to the Seller at least 15 calendar days before the termination is to be effective.
- B. In the event of a termination by LLNS, the Seller shall be paid, subject to the terms and conditions of the Purchase Order, a percentage of the Purchase Order price reflecting the percentage of work performed prior to the notice of termination, plus any reasonable charges resulting from the termination which the Seller can substantiate to the satisfaction of LLNS, using the Seller's standard record keeping system; provided, however, that the total thereof shall not exceed the Purchase Order price. The Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided.
- C. If a default occurs under the Purchase Order, and if within 30 calendar days after the non-defaulting party has given the defaulting party notice of the event of default the defaulting party has not cured the default or, if the default cannot be reasonably cured within such time period, if the defaulting party has not commenced the cure within such time period, diligently continued to pursue such cure, and completed it within 45 days after such notice, the non-defaulting party may, at its option, terminate the Purchase Order at any time thereafter upon written notice to the defaulting party. In the event of a termination for default, the non-defaulting party may thereafter pursue any remedy they may have, at law or in equity, in a court of competent jurisdiction, in accordance with the provision of these GENERAL PROVISIONS entitled *GOVERNING LAW AND VENUE*.

CLAUSES INCORPORATED BY REFERENCE

The FAR and DEAR clauses listed below are incorporated by reference as a part of these GENERAL PROVISIONS with the same force and effect as if they were set forth herein in full text, and shall apply as prescribed below. The referenced FAR and DEAR clauses are respectively located in Title 48, Chapters 1 and 9 of the Code of Federal Regulations. The clause text may be accessed at the following web sites:

FAR: <http://www.acquisition.gov/far/> DEAR: <http://www.management.energy.gov/DEAR.htm>.

As used in the clauses, the term "contract" shall mean the Purchase Order; the term "Contractor" shall mean the Seller; the term "subcontractor" shall mean the Seller's subcontractor, and the terms "Government" and "Contracting Officer" shall mean LLNS, except in FAR clauses 52.227-1, 52.227-3, 52.227-14, and 52.227-23 and DEAR clause 970.5227-5, in which clauses the term "Government" shall remain unchanged and "Contracting Officer" shall mean the DOE/NSA Contracting Officer for Prime Contract DE-AC52-07NA27344 with LLNS. As used in FAR clause 52.245-1 with respect to title, the term "Government" shall remain unchanged.

The modifications of these clause terms are intended to appropriately identify the parties and establish their contractual and administrative reporting relationship, and shall not apply to the extent they would affect the U.S. Government's rights. The Seller shall include the listed clauses in its subcontracts at any tier for the Ordered Items, including any of its components, to the extent applicable.

APPLICABLE TO ALL PURCHASE ORDERS, AS INDICATED:

DEAR 952.203-70	WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000), if the PO involves any work at a LLNS controlled site
FAR 52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)
FAR 52.222-21	PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
FAR 52.222-26	EQUAL OPPORTUNITY (MAR 2007) (NOTE: Download the EEO Poster at: http://www.dol.gov/esa/ ; select "Posters" then "Equal Employment Opportunity Act")
FAR 52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)
FAR 52.222-50	COMBATING TRAFFICKING IN PERSONS (FEB 2009)
FAR 52.223-3	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997), with ALTERNATE I (JUL 1995). Applies if the PO involves delivery of hazardous materials.
FAR 52.225-1	BUY AMERICAN ACT – SUPPLIES (FEB 2009)
FAR 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)
FAR 52.227-3	PATENT INDEMNITY (APR 1984)
FAR 52.227-14	RIGHTS IN DATA-GENERAL (DEC 2007), with ALTERNATES II, III, & V and Paragraphs (a) & (d)(3) per DEAR 927.409 (DEC 2000) (See also the <i>LIMITED RIGHTS DATA DISCLOSURE RESTRICTIONS</i> clause, below)
FAR 52.244-2	SUBCONTRACTS (JUN 2007). Paragraph (d) insert is: “Any subcontract or purchase order for supplies or services exceeding \$100,000 that are not a “commercial item” (as defined by FAR 2.101) or for any work at an LLNS-controlled site.”
FAR 52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS (AUG 2009)
FAR 52.245-1	GOVERNMENT PROPERTY (JUN 2007). Applies if any Government property is furnished or the Seller acquires property for use that is titled in the Government.
FAR 52.247-63	PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUNE 2003). Applies if the PO involves international air transportation.
FAR 52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006). Applies if the PO involves ocean transportation of supplies.

APPLICABLE IF THE PO EXCEEDS \$2,500:

FAR 52.222-41	SERVICE CONTRACT ACT OF 1965, AS AMENDED (NOV 2007). Applies if the PO is principally for the furnishing of services through the use of "service employees" and an exemption under FAR 22.1003-4 does not apply.
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APPLICABLE IF THE SUBCONTRACT EXCEEDS \$3,000

FAR 52.222-54	EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009), Applies if the Subcontract is for services in the United States, excluding commercial services purchased with a commercially available off-the-shelf (COTS) item or a COTS item with minor modifications.
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APPLICABLE IF THE PO EXCEEDS \$25,000:

DEAR 970.5223-4	WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000). Applies if the PO involves any of the hazardous activities stipulated in 10 CFR 707.2.
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APPLICABLE IF THE PO EXCEEDS \$100,000:

FAR 52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006), with ALTERNATE I (OCT 1995)
FAR 52.222-39	NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)
FAR 52.222-35	EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)
FAR 52.222-37	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)
FAR 52.222-43	FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT-PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS (NOV 2006). Applies if FAR Clause 52.222-41 applies and the Subcontract is for multiple years or includes options to renew.

FAR 52.222-44	FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT-PRICE ADJUSTMENT (FEB 2002). Applies if FAR Clause 52.222-41 applies and the Subcontract is not for multiple years and does not include options to renew.
FAR 52.227-1	AUTHORIZATION AND CONSENT (DEC 2007)
DEAR 970.5227-5	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)

APPLICABLE IF THE PO EXCEEDS \$5,000,000

FAR 52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2008), if the period of performance exceeds 120 days.
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APPLICABLE IF THE PO INVOLVES CLASSIFIED INFORMATION OR UNESCORTED ACCESS TO "LIMITED" OR "EXCLUSION" SECURITY AREAS:

DEAR 952.204-2	SECURITY (AUG 2009).
DEAR 952.204-70	CLASSIFICATION / DECLASSIFICATION (SEP 1997)
DEAR 952.204-73	FACILITY CLEARANCE (MAY 2002)
DEAR 970.5223-4	WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000). Applies if the PO exceeds \$25,000.

LIMITED RIGHTS DATA DISCLOSURE RESTRICTIONS

Generally, delivery of Limited Rights Data or Restricted Computer Software should not be necessary. If any Limited Rights Data will be furnished or delivered by the Seller or a lower-tier subcontractor pursuant to Sub-paragraph (g)(2) of the FAR 52.227-14 *RIGHTS IN DATA – GENERAL* clause of the GENERAL PROVISIONS, LLNS may disclose the data for the following purposes, which disclosure purposes shall be inserted in the Limited Rights Notice to be affixed to the data:

- A. This "Limited Rights Data" may be disclosed for evaluation purposes under the restriction that the "Limited Rights Data" be retained in confidence and not be further disclosed;
- B. This "Limited Rights Data" may be disclosed to other contractors participating in the Government's program of which this Purchase Order is a part for information or use in connection with the work performed under their contracts and under the restriction that the "Limited Rights Data" be retained in confidence and not be further disclosed; and
- C. This "Limited Rights Data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "Limited Rights Data" be retained in confidence and not be further disclosed.

PROTECTION OF CONFIDENTIAL AND PERSONALLY IDENTIFIABLE INFORMATION

For purposes of this Purchase Order, "Confidential Information" shall include any designs, drawings, specifications, source or object code, financial information, data, business or project records, policies, procedures, information relating to products, processes, or technologies; and all other information which may be disclosed by LLNS to the Seller in furtherance of the work under this Purchase Order, which is not generally available to the public or meets any of the specific exceptions listed below.

For purposes of this Purchase Order, "Personally Identifiable Information" shall include information which is associated with any individual (who is an employee, independent contractor, visitor or guest at LLNL) such as such individual's name, address, telephone number, social security number, place of birth, date of birth, mother's maiden name, biometric records (such as fingerprint, iris scan or DNA), medical history information, criminal history, employment history, financial information, or security clearance history or related information.

In the event Seller receives Confidential and/or Personally Identifiable Information in performance of this Purchase Order, the Seller shall: 1) safeguard the Confidential and/or Personally Identifiable Information against any unauthorized use, publication or disclosure, 2) restrict access to the Confidential and/or Personally Identifiable Information to only those individuals or entities needing such access to perform as required under this Purchase Order, and 3) refrain from using such Confidential and/or Personally Identifiable Information except for the purposes for which such information was originally disclosed,

In addition to the requirements identified herein, in the event LLNS provides any electronic data or information to the Seller marked as either: "Unclassified Nuclear Controlled Information", "Official Use Only", "Export Controlled Information", "Personally Identifiable Information", "Naval Nuclear Propulsion Information", "Applied Technology", "Reactor Safeguards Information", or "Confidential Foreign Government Information-Modified Handling Required", the Seller shall encrypt the information when at rest in accordance with Federal Information Processing Standard (FIPS) 140-2 Level 1 or higher.

Seller's nondisclosure obligations shall not apply to Confidential Information which the Seller can demonstrate: 1) Is public knowledge other than by breach of the provisions of this Purchase Order; 2) Is in the Seller's possession with the full right to disclose prior to its receipt from LLNS; 3) Is received by the Seller from a third party, with no restrictions on disclosure of Confidential Information; 4) Was independently developed by the Seller without access to Confidential Information; or 5) Must be disclosed pursuant to applicable laws or any court order, provided the Seller takes reasonable actions to avoid and/or minimize such disclosure, including, if possible, providing LLNS advance notice of the disclosure.

The Seller agrees, upon cancellation, expiration, or earlier termination of this Subcontract, or upon the written request of LLNS, whichever is earlier, to promptly deliver to LLNS (or, at LLNS' option, to destroy) all tangible or electronic materials in the possession of Seller, embodying or pertaining to Confidential and/or Personally Identifiable Information. Notwithstanding the foregoing, the Subcontractor's obligations with respect to Confidential and/or Personally Identifiable Information shall continue in full force and effect and survive the cancellation, expiration, or earlier termination of this Subcontract.

The Seller acknowledges and agrees that in the event of any misappropriation of the Confidential Information or unauthorized disclosure of the Personally Identifiable Information, such acts or omissions may cause LLNS irreparable harm, and therefore agrees that LLNS shall have the right to apply for an order restraining any such further misappropriation or unauthorized disclosure and for such other relief as LLNS shall deem appropriate under the circumstances. Such right of LLNS shall be in addition to the remedies otherwise available to LLNS at law or in equity.

PATENT, TRADEMARK, AND COPYRIGHT INFRINGEMENT

The Seller shall indemnify LLNS and the Government and their officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this Purchase Order, provided the Seller is reasonably notified of such claims and proceedings.

ENTIRE AGREEMENT

This Purchase Order shall consist of the Purchase Order document, these GENERAL PROVISIONS, and any other incorporated documents, which is the entire agreement between the parties concerning the subject matter hereof and supersedes all prior proposals, representations, negotiations, or agreements, whether written or oral.

ORDER OF PRECEDENCE

Any inconsistencies in the terms and conditions comprising the Purchase Order shall be resolved by giving precedence in the following order: (a) the Purchase Order document; (b) these GENERAL PROVISIONS; (c) other referenced documents, exhibits, and attachments; and (d) any referenced specification or statement of work.

DOCUMENTS OF SELLER

The provisions of any quotation or other documents of the Seller referenced in or incorporated as a part of this Purchase Order are referenced or incorporated only for the purpose of specifying the nature of the materials, supplies, or services ordered, the price therefor, and/or the delivery thereof, and any terms and conditions contained in such referenced or incorporated documents shall not apply.

GOVERNING LAW AND VENUE

The Purchase Order shall be interpreted in accordance with the substantive and procedural laws of the State of California. Any action at law or judicial proceeding instituted by either party pertaining to the Purchase Order shall be instituted in the State of California in the Superior Court of Alameda County (or in the Superior Court of San Joaquin County if the underlying action occurred at LLNL's Site 300).

(END OF GENERAL PROVISIONS)